

Application No. 10/005,993

REMARKS

With regard to the Examiner's objections to a number of claims, which Applicants are in disagreement, in some instances, with the Examiner's views, these claims have been slightly modified, it is believed, in accordance with the Examiner's suggestions, and therefore, it is believed that the Examiner's objections on pages 2 and 3 of the Official Action have been alleviated.

The rejection of certain claims on page 3, paragraph 7, of the Official Action under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,792,557 is respectfully traversed.

It is not believed that the Examiner has established a prima facie case of anticipation or obviousness with respect to the '557 patent as the teachings thereof are not believed to be applicable to the combination of components recited in the rejected claims, including in Claim 1 the thermal coated layer. In column 115, lines 55 to 64, referred to by the Examiner, this disclosure does not appear to refer to a thermal protective overcoating layer, nor does the aforementioned passage support anticipation combination of components present in the rejected claims, such as Claim 1, including a mixed region (ii) together with a thermal coating layer on one of the anodes or cathodes, and further containing at least one of (v) and (vi). Moreover, the Examiner has not provided basis in the '557 patent relating to each element of the rejected claims, which is required for anticipation.

Additionally, for a 102(b) rejection to be sustainable, the Examiner is not permitted to interpret the reference in a manner that it becomes a 103 type of rejection. Rather, as indicated herein the Examiner must show where in the reference there is specifically disclosed the combination of each of the components, particularly of the independent claims.

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With further respect to the 35 U.S.C. 103(a) rejection in paragraph 8, the Examiner appears to be utilizing a hindsight analysis and obvious to try approach which is not permitted. To further establish the unobviousness of the rejected claims, the Examiner is referred to the lab Examples and Comparative Examples and data presented in the '557 patent beginning at column 124, line 60, including the Comparative Examples beginning in column 128, line 51, and note, for example, column 129, beginning at line 35, Table 16, and the comment immediately following Table 16 with respect to the voltage and the breakdown of the element on the next day after 19 hours for the devices of the Comparative Examples 2 and 3. Similar information and data is also provided in the '557 patent. Therefore, in one aspect thereof it is believed demonstrated that this technology is complex and unpredictable, and one of ordinary skill in the art would not arrive at the present invention without undue experimentation, particularly without the benefit of the teachings of the present application.

Furthermore, the Examiner has recognized and appreciated in the Official Action that this reference does not teach or disclose certain aspects of the rejected claims, see pages 4 and 5 of the Official Action, and furthermore, it is not believed that the Examiner has established that the '557 patent discloses or teaches a thermal protective layer.

With further regard to the rejection of Claims 15 to 17 and 39, Applicants will assume the position for the present response that the patentability of these claims will depend primarily on the patentability of the claim referred to. More specifically, the rejections in paragraphs 8 and 10 of the Official Action are respectfully traversed, and more specifically, the rejections of Claims 15 to 17, and 39 as being unpatentable over U.S. Patent 5,792,557. By the Examiner's own admission, on page 6 the '557 patent fails to disclose that the electron transport layer may be subdivided into two electron transport layers. Furthermore, the Examiner has not provided a

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prima facie case of obviousness with respect to Claims 15 to 17 and 39, which are dependent claims, and therefore, include the combinations of the claims from which they depend.

The rejection of certain claims on page 7, paragraph 11, page 8, paragraph 12, page 10, paragraph 13, and page 12, paragraph 14, of the Official Action under 35 U.S.C. 103 as being unpatentable over the '557 in view of U.S. Patent 5,458,977, and further in view of U.S. Publication 2001/0533462 A1 with regard to the paragraph 12 rejections are respectfully traversed.

The comments provided herein with respect to the '557 patent are believed to be equally applicable to this rejection, and accordingly, will not be repeated. Also, with regard to the dependent claims, Applicants will assume the position for the present response that the patentability thereof will depend primarily on the patentability of the claims from which these Claims depend

Since the primary reference is believed to be overcome, the combination rejection is moot. The 5,458,977 patent illustrates a specific electroluminescent device containing a thin film electrode, and it is clear from the teachings of this patent, and more specifically the Examples beginning in column 21, and the Comparative Examples beginning at line 22, which establish that the Examiner is not permitted to extend the teachings of this reference and properly combine it with the teachings of the '557 patent, particularly without the benefit of the disclosure of the present application. Moreover, since Claims 10, 11, 25 to 31, 33 to 35, and 37 are dependent claims, Applicants will assume the position for the present response that the patentability thereof will depend primarily on the patentability of the claims from which these Claims depend.

While the 2001/0053462 A1 publication suggests at paragraph 42, page 4, that a protective layer comprising silicon oxide, silicon dioxide,

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germanium oxide and the like may be provided on the outside of the cathode, the device of this reference includes a light emitting layer containing two or more different kinds of light emitting materials, and at least one of the two or more light emitting materials is an orthometallated complex. The importance of the orthometallated complex is illustrated in the teachings of the 2001/0053462 A1 publication, and particularly the Examples and Comparative Examples on page 5, beginning at paragraph 68, and note particularly paragraph 69, Comparative Example 2, wherein there was used a similar green light emitting material Coumarin 6 in place of the complex of the invention of the 2001/0053462 A1 publication with the results as shown in the Table.

Also, with further respect to the 2002/0034659 A1 publication, as the Examiner will appreciate, it is directed to a light emitting device containing a host material of the formula, for example, as illustrated in column 9, reference Claim 1, and also note Claims 5, 7, and 8, however, the Examiner has not established a prima facie case of obviousness with respect to this reference as applicable to each of the rejected claims. Further, this reference may not be properly combinable with the primary '557 patent, particularly without the benefit of the teachings of the present application, and additionally, there are a number of CAFC decisions indicating that one of ordinary skill in the art may not select certain portions of a reference and incorporate them into a primary reference without sufficient basis thereof, particularly when the technology is complex and unpredictable as mentioned herein. The Examiner's admissions on pages 9 and 10 concerning what is not taught in the prior art also support Applicants' positions.

The provisional judicially created double patenting rejections on pages 13 and 14 of the Official Action are respectfully traversed, particularly since the Examiner has not shown a sufficient relationship between the claims of the copending applications being relied upon, and the claims of the present

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application as recited. However, Applicants are submitting a Terminal Disclaimer whereby any patent resulting from the present application will expire simultaneously with any patent resulting from U.S. Serial Nos. 10/005,930 or 10/005,970, both filed concurrently with the present application.

In this regard, the aforementioned copending applications were filed on the same day, and accordingly, Applicants are of the view that only one Terminal Disclaimer is needed with respect to these copending applications.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby requested to call Eugene O. Palazzo, at Telephone Number 585-423-4687, Rochester, New York.

Respectfully submitted,



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